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CHARLES ELMOR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 646

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY,

Appellant,

vs.

THE COMMONWEALTH OF PENNSYLVANIA

APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

JAMES H. DUFF,
Attorney General of Pennsylvania;
GEORGE W. KEITEL,
Deputy Attorney General of Pennsylvania,
Counsel for Appellee.

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No. 646

NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY,

Appellant,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Appellee

Appeal from the Judgment of the Supreme Court of the Commonwealth of Pennsylvania in the case of *Commonwealth* v. *New York, Chicago and St. Louis Railroad Company*, No. 14, May Term, 1946 (354 Pa. 388, 47 A. (2d) 272).

STATEMENT OPPOSING JURISDICTION

Now comes the Appellee, the Commonwealth of Pennsylvania, and submits herewith its statement of reasons why the above-entitled case presents no substantial Federal question so as to justify the jurisdiction of the Supreme Court of the United States, as asserted by the Appellant.

1. The appeal from the judgment of the court below sustaining the imposition of the corporate loans tax of Pennsylvania presents no substantial question. Appellant's

Assignment of Errors discloses that the sole ground for appeal is the alleged invalidity of the provision in the Pennsylvania Corporate Loans Tax Act exempting securities held by mutual savings banks without capital stock, as modified by the proviso that securities containing tax-free covenants are subject to the said tax. As long ago as 1914 the Supreme Court of Pennsylvania has construed the said proviso as being "intended to preserve the tax on corporate securities owned or held by savings institutions which had no capital stock, where in and by the securities themselves the institutions were already relieved, and needed no legislative exemption": *Commonwealth* v. *Lehigh Valley Railroad Company*, 244 Pa. 241, 90 A. 564 (1914). This construction of the proviso was concurred in by the Supreme Court of Pennsylvania as recently as 1942 in *Commonwealth* v. *School District of Pittsburgh*, 343 Pa. 394, 23 A. (2d) 496 (1942). Under such interpretation of the tax statute by the Supreme Court of Pennsylvania, no substantial Federal question can be raised.

2. Since the said proviso merely limits the exemption and is inextricably integrated with it, it could not be unconstitutional unless the exemption were unconstitutional. Even if the exemption were unconstitutional, the Appellant herein would have to pay the tax on the securities involved in the present case. Therefore, the Appellant cannot be injured by the decision of the Supreme Court of Pennsylvania applying the tax to its securities: *Hermann Estate*, 349 Pa. 230, 36 A. (2d) 804 (1944).

3. It has been the policy of the Pennsylvania Legislature to exempt from taxation bonds held by savings institutions having no capital stock. When the corporation which issues such bonds undertakes to assume the payment of all taxes, the reason for the exemption disappears and the tax is

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ultimately paid by the corporation. This does not result in multiple classification. On the contrary, it preserves in the only manner possible the exemption in favor of savings institutions having no capital stock. If the exemption were to so overlap that it extended to the corporations which had assumed the payment of taxes when the bonds were issued, as Appellant contends it should, discrimination would exist against any such corporation which did not happen to have any bonds held by such savings institutions.

For the foregoing reasons, none of the questions raised on this appeal are of substance.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
By GEORGE W. KEITEL,
Deputy Attorney General,
Of Counsel for Appellee.

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MOTION TO DISMISS OR AFFIRM

Now comes the Appellee, the Commonwealth of Pennsylvania and moves that the appeal in the above case be dismissed on the ground that the case presents no substantial Federal question, and it further moves that, if the motion to dismiss be not granted, this Court affirm the decision of the Supreme Court of Pennsylvania on the ground that the questions on which the decision of this cause depends, are

so unsubstantial as not to need further argument. In support of this motion the Appellee advances the reasons set forth in the statement opposing jurisdiction filed in connection with this appeal.

COMMONWEALTH OF PENNSYLVANIA,
By GEORGE W. KEITEL,
Deputy Attorney General,
JAMES H. DUFF,
Attorney General.

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